

LOCAL AGENCIES OF THE NORTH DELTA

1010 F Street, Suite 100, Sacramento, CA 95814
(916) 455-7300, osha@semlawyers.com

August 20, 2015

SENT VIA EMAIL (dmurillo@usbr.gov; mark.cowin@ca.water.gov)

David Murillo
Director
Reclamation Mid-Pacific Region
801 I Street, Suite 140
Sacramento, CA 95814

Mark Cowin
Director
California Department of Water Resources
P.O. Box 942836
Sacramento, CA 94236

**RE: DCE CM 1 Property Acquisition Management Plan for the
California Water Fix/BDCP Alternative 4A**

Dear Messrs. Murillo and Cowin:

I am writing to you on behalf of Local Agencies of the North Delta (“LAND”)¹ regarding the draft DCE CM 1 Property Acquisition Management Plan (“Property Acquisition Plan”) for the California Water Fix/BDCP (“Tunnels”) recently obtained from the Metropolitan Water District (“MWD”) pursuant to a Public Records Act request. The existence and content of the Property Acquisition Plan is concerning on many levels to the LAND districts and landowners, many of whom own properties slated to be taken for the Tunnels. LAND member district water supplies will also be adversely affected by the proposed Sacramento River diversions.

¹ LAND member agencies cover an approximately 118,000 acre area of the Delta; LAND participants include Reclamation Districts 3, 150, 307, 317, 349, 407, 501, 551, 554, 556, 744, 755, 813, 999, 1002, 2111, 2067 and the Brannan-Andrus Levee Maintenance District. Some of these agencies provide both water delivery and drainage services, while others only provide drainage services. These districts also assist in the maintenance of the levees that provide flood protection to homes and farms. Several of the LAND districts are also cooperating agencies with the Bureau for purposes of NEPA review of the Tunnels project.

First, the undated Property Acquisition Plan, which lists 300 parcels slated for use in the Tunnels project, calls into question the proper consideration of alternatives by the Bureau of Reclamation (“Bureau”) and Department of Water Resources (“DWR”). Under the National Environmental Policy Act (“NEPA”), in particular, a lead agency cannot make a decision on a project before NEPA review is completed. The fact that the NEPA/CEQA lead agencies are moving forward with a Property Acquisition Plan for just one of the alternatives in the Water Fix/BDCP environmental review documents at the same time as other alternatives are supposedly still being considered, indicates that full consideration of the alternatives described in the environmental review documents is not occurring.

Second, the fact that the Property Acquisition Plan was obtained from MWD indicates that the water export contractors are exerting an unusual, and likely impermissible, level of control over what is described as a state and federal public works project. The active participation by MWD (and perhaps other unidentified state and federal water contractors) in the development of plans to take private property for the Tunnels project calls into question the commitment of the state and federal governments to actively manage the development of the Tunnels project in the public interest. While MWD answers only to its ratepayers, BOR must consider the public interest of the entire nation, and DWR must consider the interests of the entire state. Given the massive negative impacts not only on private property and farmland in the Delta as well as the severe degradation of water quality in the San Francisco Bay Delta that would occur as a result of the Tunnels, it is imperative that public agencies represent all of their constituents. Moreover, the water contractors should not have an unduly enlarged role in decisionmaking on the Tunnels project.

Third, the fact that the documents were obtained from MWD calls into question the commitment of the Bureau and DWR to communicate with affected property owners in the Delta regarding impacts on their homes, farms and communities. It appears that the water contractors are privy to essential information regarding the impacts of the project on specific properties prior to any attempts to provide that information to the affected landowners themselves. In a separate letter submitted to DWR on August 19, 2015, we have requested all documents pertaining to the development and review of the Property Acquisition Plan so that we may learn more about the apparently flawed process by which the Bureau and DWR appear to be undertaking planning for the Tunnels project. Delta landowners that are impacted by the Tunnels project have a right to know what is planned for their properties, which impacts their decisions as to how to manage their farms and lands in the coming years. Moreover, these property

acquisition issues fall within the purview of the Bureau's NEPA cooperating agency process with several LAND districts, yet no attempt to bring this information forward in that process has been made.

In addition to the concerns described above, we have the following specific questions regarding the Acquisition Plan:

1. Press reports indicate DWR had the Acquisition Plan prepared and it was paid for by certain undisclosed water tunnel contractors.
 - a. What role, if any, did Metropolitan Water District, perform in the preparation of the Property Acquisition Plan?
 - b. Which water contractors or other entities have received the Property Acquisition Plan?
 - c. It appears a policy decision was made to provide the Property Acquisition Plan only to those who paid for it. If so, who made that policy decision?
 - d. What is the justification for providing these agencies with this information while withholding it from affected landowners?
 - e. What policy guidance was followed by DWR or given to DWR that directed the selective disclosure to of the Property Acquisition Plan to MWD and other water contractors?
2. Who, at DWR or other department, agency or office, directed that the Acquisition Plan be prepared?
3. Has DWR approved the Acquisition Plan? If so, who approved it and when?
4. Has DWR informed the prospectively impacted county officials regarding the properties to be taken within their respective jurisdictions?
5. When does DWR intend to inform landowners that their land is slated to be taken for the Tunnels project?
6. What, if any, role has the Bureau had in the development of the Property Acquisition Plan?
7. A Water Fix Fact sheet released today, August 20, 2015, indicates that there are potentially 192 impacted parcels.

David Murillo
Mark Cowin
August 20, 2015
Page 4 of 5

- a. What is the reason for the discrepancy between the 300 parcels listed in the Property Acquisition Plan and the 192 parcels referenced in the Fact Sheet?
 - b. Have any new parcels been “added” to the acquisition list that were not included in the version of the Property Acquisition Plan listing 300 parcels?
8. What are the budget estimates for implementing the Property Acquisition Plan, who prepared those estimates, and what assumptions were used in the tabulations?

We respectfully request written responses to these questions as soon possible, along with your respective agencies’ responses to the concerns described in this letter.

Sincerely,

By: 
Osha R. Meserve

cc: Senator Lois Wolk (Mindy.Simmons@sen.ca.gov)
Senator Cathleen Galgiani (senator.galgiani@senate.ca.gov)
Assembly Speaker Toni Atkins (speaker.atkins@assembly.ca.gov)
Senator Kevin De Leon (kip.lipper@sen.ca.gov)
Senator Mark Leno (senator.leno@sen.ca.gov)
Assemblymember Jim Frazier (assemblymember.frazier@asm.ca.gov)
John Laird (Kimberly.goncalves@resources.ca.gov)
Congressman John Garamendi (Brandon.Minto@mail.house.gov)
Congressman Jerry McNerney
Jared Blumenfeld, Regional Director, U.S. EPA, Region IX
(blumenfeld.jared@epa.gov)
Christina Goldfuss (christina_w_goldfuss@ceq.eop.gov)
LAND Member Districts